

Message Text

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TAGS: OVIP (ARELLANO)

SUBJECT: ARELLANO VISIT - BRIEFING MATERIAL

1. OPIC GENERAL COUNSEL CECIL HUNT PROVIDED FOLLOWING MATERIAL FOR INCLUSION IN STATE/COMMERCE TEAM'S BRIEFING BOOKS.

2.QUOTE. AT THE TIME JAMAICA IMPOSED THE BAUXITE PRODUCTION LEVY IN 1974 IT TOOK ACTION TO NULLIFY AGREEMENTS UNDER WHICH CERTAIN DISPUTES WITH SOME OF THE ALUMINUM COMPANIES WERE TO BE SUBMITTED TO THE INTERNATIONAL CENTER FOR THE SETTLEMENT OF INVESTMENT DISPUTES (ICSID). THE EFFECT OF THIS JAMAICAN ACTION ON THE PARTICULAR DISPUTES IN QUESTION WAS LIMITED; THE ICSID TRIBUNAL HELD THAT JAMAICA'S ATTEMPT TO WITHDRAW JURISDICTION RETROACTIVELY WAS INEFFECTIVE AND THE ICSID PROCEEDINGS THEMSELVES WERE NOT PURSUED BY THE COMPANIES AFTER THEY NEGOTIATED NEW ARRANGEMENTS WITH JAMAICA. THE MANNER IN WHICH JAMAICA SHOWED DISREGARD FOR THESE MULTILATERAL DISPUTE PROCEDURES CAUSED A NEGATIVE REACTION IN THE BUSINESS
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COMMUNITY AND THE USG NOTED OFFICIAL CONCERN. THIS IS AN AREA TO WHICH JAMAICA MIGHT WELL GIVE SOME ATTENTION AS IT SEEKS TO REHABILITATE ITS INVESTMENT CLIMATE.

BACKGROUND. IN MAY 1974, THE GOJ ADVISED ICSID THAT IT WAS WITHDRAWING DISPUTES RELATING TO MINERALS FROM THE

JURISDICTION OF ICSID. JAMAICA HAD PREVIOUSLY ENTERED INTO INVESTMENT CONTRACTS WITH THREE ALUMINUM COMPANIES PROVIDING FOR SUBMISSION OF DISPUTES TO ICSID.

THE JUNE 1974 (BAUXITE PRODUCTION LEVY ACT) CONTAINED A SECTION AMENDING THE INVESTMENTS DISPUTES AWARDS (ENFORCEMENT) ACT, 1966 (WHICH HAD IMPLEMENTED JAMAICA'S COMMITMENTS UNDER THE ICSID CONVENTION) TO REMOVE THE ENFORCEMENT OF ICSID AWARDS RELATING TO NATURAL RESOURCES FROM THE JURISDICTION OF THE JAMAICA COURTS.

THE ICSID CONVENTION DOES NOT OBLIGATE A SIGNATORY GOVERNMENT TO SUBMIT ALL INVESTMENT DISPUTES TO ICSID. IT DOES PROVIDE, HOWEVER, THAT WHERE THE INVESTOR AND HOST GOVERNMENT HAVE AGREED TO SUBMIT DISPUTES TO ICSID, EITHER AS PART OF THE ORIGINAL INVESTMENT ARRANGEMENTS OR WITH RESPECT TO A PARTICULAR DISPUTE THAT HAS ALREADY ARISEN, THE AWARD OF THE ICSID TRIBUNAL SHALL BE BINDING ON THE PARTIES AND MUST BE ENFORCED BY THE COURTS OF ALL SIGNATORY COUNTRIES.

END QUOTE. VANCE

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